Ohio Legislative Service Commission

Bill Analysis

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BILL SUMMARY

The Public Employees' Collective Bargaining Law

Strikes

- Prohibits "public employees" from striking.
- Requires the public employer to deduct from the compensation of a striking employee an amount equal to twice the employee's daily rate of pay for each day or part thereof that the employee engaged in a strike.
- Provides that an employee that strikes in violation of an injunction can be fined no more than $1,000 or subjected to the penalties for contempt of court, or both.

Ability to bargain

- Expands the definition of "supervisor" with respect to members of a fire or police department.
- Expands the definition of "supervisor" and "management level employee" with respect to faculty of a state institution of higher education to include those involved in certain decisions.
- Prohibits employees of community schools from collectively bargaining, except for conversion community schools.
- Allows the governing authority of a conversion community school to opt out of collectively bargaining with the community school's employees.

- Limits the ability of other employees to collectively bargain with their public employers, including regional council of government employees and members of the unclassified civil service, to allow the employees to bargain only if the public employer elects to do so.

Right to bargain

- Removes continuation, modification, or deletion of an existing collective bargaining agreement from the subject of collective bargaining.

Bargaining units and exclusive representatives

- Changes the time limitations within which the State Employment Relations Board must act upon a request for recognition.

- Allows the Board to determine appropriate units, remove classifications from a bargaining unit, or hold an election regardless of an agreement or a memorandum of understanding granting nonexclusive recognition.

- Removes the provision prohibiting the appeal of a decision of the Board that determines the appropriate bargaining unit.

- Prohibits an appropriate unit of firefighters from including rank and file members with members who are of the rank lieutenant and above.

Subjects of collective bargaining

- Expands the list of subjects that are inappropriate for collective bargaining.

- Permits public employers to not bargain on any subject reserved to the management and direction of the governmental unit, even if the subject affects wages, hours, and terms and conditions of employment.

- Prohibits an existing provision of a collective bargaining agreement that was modified, renewed, or extended that does not concern wages, hours, and terms and conditions from being a mandatory subject of collective bargaining.

- Allows a public employer to engage in specified employment related actions at the employer's discretion unless the public employer specifically agrees otherwise in an express written provision of a collective bargaining agreement.

Provisions of a collective bargaining agreement

- Prohibits a public employer that is a school district, educational service center, community school, or STEM school from entering into a collective bargaining

agreement that does specified things, such as establishing a maximum number of students who may be assigned to a classroom or teacher.

- Requires collective bargaining agreements between such an education-related public employer and public employees to comply with all applicable state or local laws or ordinances regarding wages, hours, and terms and conditions of employment, unless the conflicting provision establishes benefits that are less than provided in the law or ordinance.

- Prohibits a collective bargaining agreement from prohibiting a public employer that is in a state of fiscal emergency from serving a written notice to terminate, modify, or negotiate the agreement.

- Prohibits a collective bargaining agreement from prohibiting a public employer that is in a state of fiscal watch from serving a written notice to modify a collective bargaining agreement so that salary or benefit increases, or both, are suspended.

- Prohibits a collective bargaining agreement entered into or renewed on or after the bill's effective date from containing provisions limiting a public employer's ability to privatize operations.

- Prohibits a collective bargaining agreement entered into or renewed on or after the bill's effective date from containing provisions for certain types of leave to accrue above listed amounts or to pay out for sick leave at a rate higher than specified amounts.

- Prohibits a collective bargaining agreement entered into or renewed on or after the bill's effective date from containing certain provisions regarding the deferred retirement option plan.

- Limits the currently required grievance procedure to unresolved grievances that are based on the disputed interpretations of the written provisions of the agreement.

Dispute resolution

- Eliminates the ability of the parties to submit disputes to an agreed-upon dispute resolution procedure.

- Extends the timelines involved in the dispute resolution process.

- Expands the list of factors a fact-finder must consider in resolving disputes, and requires the fact-finder to consider as the primary factor the interests and welfare of the public and the ability of the public employer to finance and administer the issues proposed.

- Eliminates the final offer settlement procedure.

- Requires the legislative body of the public employer to be the final decision-maker with respect to any dispute that is unresolved during the fact-finding process, and prescribes procedures and requirements for the legislative body to make a determination.

- Requires any agreement determined by the legislative body to be in effect for three years.

Unfair labor practices

- Expands the list of unfair labor practices that may be committed by an employee organization, its agents, or public employees and the remedies that may be applied for unfair labor practices committed by those entities.

- Requires SERB to conduct hearings on all unfair labor practice charges, and revises the procedures regarding those hearings.

Miscellaneous changes in the PECBL

- Requires a public employer to report certain information about compensation paid to public employees under a collective bargaining agreement.

- Repeals the provision requiring the Public Employee Collective Bargaining Law to be liberally construed.

Public employee pay

- Creates salary ranges by removing the steps from the salary schedules.

- Requires merit-based pay for most public employees, including board and commission members, and makes other, related changes.

- Requires performance-based pay for teachers.

Public employee benefits

- Caps vacation leave for certain public employees at 7.7 hours per biweekly pay period.

- Reduces sick leave accrual for most public employees from 4.6 hours to 3.1 hours per biweekly pay period.

- Limits public employer contributions toward health care benefit costs to 85%.

- Requires health care benefits provided to management level employees to be the same as any health care benefits provided to other employees of the same public employer.

- Requires boards of education to adopt policies to provide leave with pay for school employees and abolishes statutorily provided leave for those employees.

- Abolishes continuing contracts for teachers, except for those continuing contracts in existence prior to the effective date of the bill and revises the law relating to limited contracts.

- Prohibits a public employer from paying employee contributions to the five public employee retirement systems.

- Requires health care benefits provided through a jointly administered trust fund to be the same as the health care benefits provided to other public employees.

Reduction in force

- Removes consideration of seniority and length of service, by itself, from decisions regarding a reduction in work force of certain public employees.

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CONTENT AND OPERATION

The Public Employees' Collective Bargaining Law

Prohibition against strikes

The bill prohibits "public employees" (see "**Ability to bargain**," below, for a definition of "public employee") from striking and prescribes penalties for violating this prohibition. Under the bill, an employee who is absent from work without permission or who abstains wholly or in part from the full performance of the employee's duties in the employee's normal manner without permission, on the date when a strike occurs, must be presumed to have engaged in the strike on that date.[1]

[1] R.C. 4117.01(B) and 4117.15(A), (C), and (L).

Currently, certain public employees may strike under limited circumstances. If an unauthorized strike occurs (essentially, those public employees strike outside of those circumstances, or if other public employees under the PECBL who are not permitted to strike actually strike), the employees are subject to penalties. Additionally, currently a public employer may obtain an injunction to stop a strike.[2]

The bill also prohibits any public employee or any employee organization (essentially, a union) from causing, instigating, encouraging, or condoning a strike. Additionally, the bill prohibits any person exercising on behalf of any public employer any authority, supervision, or direction over any public employee from having the power to authorize, approve, condone, or consent to a strike, or the engaging in a strike, by one or more public employees, and the bill prohibits that person from authorizing, approving, condoning, or consenting to the strike or engagement.[3]

Under the bill, in the event that it appears that a violation of the (1) prohibition against strikes, (2) prohibition against causing, instigating, encouraging, or condoning a strike, or (3) prohibition against certain persons authorizing or condoning a person to strike or engage in a strike may have occurred, the chief executive officer of the public employer involved must, on the basis of an investigation and affidavits as the chief executive officer may deem appropriate, determine whether or not a violation has occurred and the dates of the violation. If the chief executive officer determines that a violation has occurred, the chief executive officer must also determine, on the basis of any further investigation and affidavits as the chief executive officer may deem appropriate, the names of employees who committed the violation and the dates thereof. The determination is not final until the completion of the procedures provided for in the bill.

Next, the chief executive officer must immediately notify each employee that the chief executive officer has been found to have committed the violation, the dates of the violation, and that the employee has the right to object to the determination as described under "**Objections by employees**" below. Notice to each employee must be by personal service or by certified mail to the employee's last address filed by the employee with the employer. Also, the chief executive officer must also notify the chief fiscal officer of the names of all the employees determined to have violated this section and of the total number of days, or portions thereof, on which it has been determined that the violation occurred.[4]

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[2] R.C. 4117.01(I), 4117.14(D), 4117.15, 4117.16 (repealed), and 4117.23 (repealed).

[3] R.C. 4117.15(A) and (D).

[4] R.C. 4117.15(E) and (F).

Penalties for striking

Under the bill, any person who violates the prohibition against striking or the prohibition against causing, instigating, encouraging, or condoning a strike may be subject to removal or other disciplinary action provided by law for misconduct, which is similar to the current law penalties for unauthorized strikes. Under continuing law, no public employee is entitled to pay or compensation from the public employer for the period engaged in any strike.

Additionally, under the bill, not earlier than 30 days or later than 90 days following the date of the determination made that a person has violated any of the prohibitions described in (1) to (3) under "**Prohibitions against strikes**" above, the chief fiscal officer of the public employer involved must deduct from the compensation of each such public employee an amount equal to twice the employee's daily rate of pay for each day or part thereof that the chief executive officer determined that the employee committed a violation. This penalty is similar to one of the penalties assessed under current law for unauthorized strikes. The employee's daily rate of pay is the employee's rate of pay at the time of the violation. In computing the deduction, credit must be allowed for amounts already withheld from an employee's compensation on account of the employee's absence from work or other withholding of services on the dates of the violation. In computing the 30-day to 90-day period of time following the determination of a violation if the employee's annual compensation is paid over a period of time that is less than 52 weeks, that period of time between the last day of the last payroll period of the employment term in which the violation occurred and the first day of the first payroll period of the next succeeding employment term must be disregarded and not counted. [5]

Objections by employee

Within 20 days after the date on which notice was served or mailed to an employee, the employee determined to have committed the violation may object to the determination by filing with the chief executive officer the employee's sworn affidavit, supported by available documentary proof, which must contain a short and plain statement of the facts upon which the employee relies to show that the determination was incorrect. An employee who submits an affidavit is subject to the penalties of perjury.

If the chief executive officer determines that the affidavit and supporting proof establishes that the employee did not violate any of the prohibitions described in (1) to (3) under "**Prohibitions against strikes**" above, the chief executive officer shall sustain

[5] R.C. 4117.15(B), (G), and (K).

the objection. Additionally, if the chief executive officer determines that the employee did not violate those prohibitions, the chief executive officer must dismiss the objection and so notify the employee.

If the chief executive officer determines that the affidavit and supporting proof raises a question of fact that, if resolved in favor of the employee, would establish that the employee did not violate any of the prohibitions described in (1) to (3) under "**Prohibitions against strikes**" above, the chief executive officer must appoint a hearing officer to determine whether in fact the employee did violate any of those prohibitions. The employee bears the burden of proof at the hearing. If the hearing officer determines that the employee failed to establish that the employee did not violate any of those prohibitions, the chief executive officer must so notify the employee.

If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that the employee did not violate any of the prohibitions described in (1) to (3) under "**Prohibitions against strikes**" above, the chief executive officer must immediately notify the chief fiscal officer who must cease all further deductions and refund any deductions previously made pursuant to the bill.

The determinations regarding whether a person violated any of the prohibitions described in (1) to (3) under "**Prohibitions against strikes**" above are reviewable pursuant to Ohio's Administrative Procedure Act. The bill prohibits any public employer, the State Employment Relations Board (SERB), or any court of competent jurisdiction from waiving the penalties or fines assessed regarding a violation of any of those prohibitions as part of the settlement of an illegal strike.[6] Thus, it appears that these penalties could be in addition to any penalties permitted under continuing law for engaging in an unfair labor practice by inducing or encouraging an individual to strike.[7]

Injunctions to stop strikes

Whenever a strike occurs, the public employer may seek an injunction against the strike in the court of common pleas of the county in which the strike is located. Under continuing law, an unfair labor practice by a public employer is not a defense to the injunction proceeding.[8]

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[6] R.C. 4117.15(B), (H), and (I).

[7] R.C. 4117.11(B)(5) and 4117.12.

[8] R.C. 4117.15(A) and (J).

Where it appears that public employees or an employee organization threaten or are about to violate any of the prohibitions described in (1) to (3) under "**Prohibitions against strikes**" above by engaging in a strike, the chief executive officer must immediately notify the chief legal officer of the public employer involved and provide the chief legal officer with any facilities, assistance, or data as will enable the chief legal officer to carry out the chief legal officer's duties under the bill. Regardless of the failure or refusal of the chief executive officer to act as required, the chief legal officer must immediately apply to the court of common pleas in the county where the public employer is located for an injunction against the violation. If the public employees who are the subject of the order of the court enjoining or restraining the strike do not comply with the order, the chief legal officer must immediately file with the court of common pleas to penalize the public employees engaging in the strike.

Except as provided below, the penalty for engaging in a strike in violation of an injunction order described immediately above is a fine of not more than $1,000, or any other sanction in accordance with the penalties for contempt of court, or both, in the discretion of the court. Those penalties include the following:

- For a first offense, a fine of not more than $250, a definite term of imprisonment of not more than 30 days in jail, or both;
- For a second offense, a fine of not more than $500, a definite term of imprisonment of not more than 60 days in jail, or both;
- For a third or subsequent offense, a fine of not more than $1,000, a definite term of imprisonment of not more than 90 days in jail, or both.

Where an employee organization knowingly disobeys a lawful mandate of a court of record, or knowingly offers resistance to such lawful mandate, in a case involving or growing out of a strike in violation of the bill the penalty for each day that such contempt persists is a fine fixed at the discretion of the court.[9]

Ability to bargain

Supervisors and management level employees

The bill potentially restricts the ability of some people to collectively bargain. Under continuing law, public employees under the PECBL have the right to collectively bargain with their public employers, and those public employers must bargain with those employees. A public employee generally is any person holding a position by appointment or employment in the service of a public employer, but numerous

[9] R.C. 4117.27, by reference to R.C. 2705.05(A), not in the bill.

exceptions exist. Under continuing law, a public employer may elect to bargain with all but one group that falls under these exceptions, but is not required to bargain. One exception is that "public employee" does not include supervisors. Supervisors generally are individuals who have authority to take certain actions regarding the terms and conditions of employment of other public employees, if the exercise of that authority is not of a merely routine or clerical nature but requires independent judgment. With regard to members of a police or fire department, current law specifies that no person can be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department. The bill removes that limitation, so more people may be deemed supervisors under the law, and thus cannot collectively bargain with their public employer unless the public employer elects to do so. Additionally, the bill expressly states that the term "supervisor" includes "fire supervisory officers."

The bill also changes who is considered a "supervisor" or a "management level employee" with respect to faculty at a state institution of higher education. Currently, with respect to faculty members, heads of departments or divisions are supervisors, and the bill adds that any faculty member or group of faculty members that participate in decisions with respect to courses, curriculum, personnel, or other matters of academic or institutional policy are supervisors or management level employees. Currently, these faculty members are not considered supervisors or management level employees.

A management level employee, under continuing law, generally is an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration. Like supervisors, a public employer may elect, but is not required to, collectively bargain with management level employees. The bill expands the definition of "management level employee" to include any faculty who, individually or through a faculty senate or like organization, participate in the governance of the institution, are involved in personnel decisions, selection or review of administrators, planning and use of physical resources, budget preparation, and determination of educational policies related to admissions curriculum, subject matter, and methods of instruction and research.[10]

Charter school employees

Under the bill, community (charter) school employees do not have collective bargaining rights, and the bill prohibits a community school from bargaining

[10] R.C. 4117.01(C)(10), (F), and (K).

collectively with its employees. These provisions do not apply to a conversion community school unless the community school elects not to collectively bargain under continuing law procedures. Currently, community schools must bargain with their employees.[11]

Other employees

The bill adds employees of a regional council of government to the list of public employees with whom a public employer may elect, but is not required to, collectively bargain. Additionally, the bill expands that list of employees to include all employees in the unclassified civil service, rather than just those members of the unclassified civil service who act in a fiduciary capacity.

The bill eliminates from the definition of "public employee" any person working pursuant to a contract between a public employer and a private employer and over whom the National Labor Relations Board has declined jurisdiction on the basis that the involved employees are employees of a public employer. The bill removes this inclusion, thus it appears that this group of employees will no longer have collective bargaining rights.[12]

Rights of public employees under the PECBL

The bill removes the right of public employees to bargain collectively with their public employers to determine the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. Public employees still have the right to bargain collectively to determine wages, hours, terms, and conditions of employment and to enter into collective bargaining agreements.[13] Currently, the PECBL uses various forms of the phrase of "wages, hours, and terms and other conditions of employment." The bill changes the phrase to "wages, hours, and terms and conditions of employment" throughout that law.[14]

Currently, a public employee has the right to refrain from joining an employee organization, and continuing law prohibits a public employer from agreeing to a provision requiring that a public employee become a member of an employee organization as a condition for securing or retaining employment. The bill further states that any agreement that purports that employees join any exclusive

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[11] R.C. 3314.10, 4117.01(B)(1)(e) and (2), 4117.03(B), and 4117.06(C)(6).

[12] R.C. 4117.01(C).

[13] R.C. 4117.01(G), 4117.03(A)(4), and 4117.08(C).

[14] R.C. 4117.01, 4117.03, and 4117.08.

representative (the union selected to represent a group of employees) is void and unenforceable.[15]

Bargaining units and exclusive representatives

Bargaining unit

Under continuing law, SERB decides in each case the unit of employees appropriate for the purposes of collective bargaining. The bill specifically requires SERB to decide the most appropriate unit, and eliminates SERB's current ability to determine a unit to be the appropriate unit in a particular case, even though some other unit might also be appropriate. Additionally, under the bill it appears that a bargaining unit designation is now appealable to a court, as the bill eliminates the provision that states SERB's determination is final and conclusive and not appealable to a court.

Continuing law contains restrictions with respect to SERB's bargaining unit classifications. The bill expands those restrictions to prohibit SERB, with respect to members of a fire department, designate as appropriate a unit that includes rank and file members of the department with members who are of the rank of lieutenant or above. Any bargaining unit of a fire department that does not conform to this requirement on the bill's effective date ceases to be an appropriate unit upon the expiration of the collective bargaining agreement covering that unit that is in effect on the bill's effective date or three years after the bill's effective date, whichever is earlier. Thereafter, SERB must designate the appropriate unit for the fire department in accordance with the bill's requirements.[16]

Recognition procedures

Under continuing law, an employee organization becomes the exclusive representative of a bargaining unit in one of the following ways: (1) by being certified by SERB after a SERB-conducted election, or (2) through filing a request for recognition. Under the bill, if an employer has filed a petition for election, the bill prohibits SERB from certifying any exclusive representative without an election unless, under continuing law, SERB determines that a free and untrammelled election cannot be conducted because of the employer's unfair labor practices and that at one time the employee organization had the support of the majority of the employees in the unit.

The bill limits the current law restriction that SERB cannot conduct an election in any appropriate bargaining unit within which a SERB-conducted election was held in

[15] R.C. 4117.03 and 4117.09(C).

[16] R.C. 4117.05(C) and 4117.06.

the preceding 12-month period, nor during the term of any lawful collective bargaining agreement, to those agreements entered into before the bill's effective date. Additionally, the bill permits a petition for election to be filed with SERB no sooner than 120 days before the expiration date of any collective bargaining agreement or after the expiration date. Current law limits the filing period to no sooner than 120 days but no later than 90 days before the expiration date. The bill also removes the restriction that the petition can only be filed after the expiration date until the public employer and exclusive representative enter into a written agreement.

Under the bill, no collective bargaining agreement entered into on or after the bill's effective date can bar the conduct of an election or certification pursuant to a petition that is timely filed in accordance with the bill.[17]

With respect to a request for recognition, the bill extends the time period during which an employee can object to the certification of an employee organization as an exclusive representative from 21 days to 30 days. The bill also requires SERB to investigate a request for recognition on the 31st day following the request, unless by the 30th day (extended from 21 days under current law) following the request SERB receives any of the following under continuing law:

- A petition for election from the public employer;
- Substantial evidence based on, and in accordance with, SERB rules demonstrating that a majority of the employees in the described bargaining unit do not wish to be represented by the employee organization filing the request for recognition;
- Substantial evidence based on, and in accordance with, SERB rules from another employee organization demonstrating that at least 10% of the employees in the described bargaining unit wish to be represented by the other employee organization;
- Substantial evidence based on, and in accordance with, SERB rules indicating that the proposed unit is not an appropriate unit.

Under current law, SERB must certify the employee organization that filed the request by the 22nd day after the request was filed unless SERB receives the petition or evidence described above.

[17] R.C. 4117.07.

Regardless of the procedures described above, under continuing law a public employer cannot recognize an employee organization as an exclusive representative if a lawful written agreement, contract, or memorandum of understanding exists on the bill's effective date (changed from the section's effective date under current law) recognizing another employee organization or if the employee organization traditionally is the only representative of the unit. Under the bill, nonexclusive recognition previously granted through an agreement or memorandum of understanding does not preclude SERB from doing any of the following:

- Determining an appropriate unit;
- If necessary, removing classifications from a bargaining unit under an existing nonexclusive contract, agreement, or memorandum of understanding;
- Holding an election to determine an exclusive representative for all those employees deemed a part of the appropriate unit.[18]

Subjects for collective bargaining

Mandatory subjects of collective bargaining

As discussed under "**Rights of public employees under the PECBL**" above, the bill eliminates the right to collectively bargain regarding the continuation, modification, or termination of an existing provision of a collective bargaining agreement. Under the bill, any existing provision of a collective bargaining agreement that was modified, renewed, or extended from a prior collective bargaining agreement that does not concern wages, hours, and terms and conditions must not be a mandatory subject of collective bargaining and must not be subject to any impasse procedure without the mutual agreement of both the public employer and exclusive representative. The inclusion of a provision in a previous collective bargaining agreement cannot be used as a basis for the provision being determined to concern wages, hours, and terms and conditions.

The bill expands the subjects that are inappropriate subjects for collective bargaining to include the following:

(1) Employer-paid employee contributions to any of the five public employee retirement systems (see "**Employee contributions to public employee retirement systems**" below);

[18] R.C. 4117.05.

(2) Health care benefits, except for the amount of the premium for which a public employer and the public employees of the public employer pays. The provision of health care benefits for which the employer is required to pay more than 85% of the cost is not an appropriate subject for collective bargaining. (See "**Health care benefits**," below.)

(3) The privatization of a public employer's services or contracting out of the public employer's work;

(4) The number of employees required to be on duty or employed in any department, division, or facility of a public employer.

With respect to health care benefits, the bill states that the provision of health care benefits for which the employer is required to pay more than 85% of the cost is not an appropriate subject for collective bargaining. The bill prohibits any public employer from agreeing to a provision that requires the public employer to pay more than 85% of the cost paid for health care benefits. Under the bill, any law pertaining to the provision of health care benefits to public employees prevails over conflicting collective bargaining agreements.[19]

Rights reserved to the public employer

The bill eliminates the requirement that a public employer must collectively bargain on subjects reserved to the management and direction of the governmental unit that affect wages, hours, terms and conditions of employment and the continuation, modification, or deletion of an existing provision in a collective bargaining agreement. Under current law, unless a public employer agrees otherwise in a collective bargaining agreement, the PECBL does not impair the right of the public employer to take specified actions. The bill requires the public employer to specifically agree otherwise in an express written provision of a collective bargaining agreement to waive the right of the public employer to do any of the following:

- Hire, discharge, transfer, suspend, or discipline employees (similar to current law);
- Determine the number of persons required to be employed or laid off (similar to current law);
- Determine the qualifications of employees;

[19] R.C. 4117.08(A), (B), and (E) and 4117.10, with conforming changes in R.C. 9.90 and 4117.03.

- Determine the starting and quitting time and the number of hours to be worked by its employees;
- Make any and all reasonable rules and regulations;
- Determine the work assignments of its employees;
- Determine the basis for selection, retention, and promotion of employees;
- Determine the type of equipment used and the sequence of work processes;
- Determine the making of technological alterations by revising either process or equipment or both;
- Determine work standards and the quality and quantity of work to be produced;
- Select and locate buildings and other facilities;
- Establish, expand, transfer, or consolidate work processes and facilities;
- Transfer or subcontract work;
- Consolidate, merge, or otherwise transfer any or all of its facilities, property, processes, or work with or to any other municipal corporation or entity or effect or change in any respect the legal status, management, or responsibility of such property, facilities, processes, or work;
- Terminate or eliminate all or any part of its work or facilities.[20]

Considerations during negotiations

During negotiations between a public employer and an exclusive representative, the bill requires the parties to consider, for purposes of determining the ability of the public employer to pay for any terms agreed to during collective bargaining, only the financial status of the public employer at the time period surrounding the negotiations. When determining whether the employer can pay for those terms, the parties must consider the employer's inability to pay. The parties may not base the ability of the public employer to pay for those terms on either of the following:

[20] R.C. 4117.08(C).

(1) Any potential future increase in the income of the public employer that would only be possible by the employer obtaining funding from an outside source, including, but not limited to, the passage of a levy or a bond issue;

(2) The employer's ability to sell assets.[21]

Provisions in and approval of agreements

Education provisions

The bill prohibits a public employer that is a school district, educational service center, community school, or STEM school from entering into a collective bargaining agreement that does any of the following:

(1) Requires the public employer to employ a minimum number of total personnel or any category of personnel;

(2) Restricts the authority of the public employer or a district or service center superintendent to assign personnel to school buildings or restricts the authority of a building principal to designate the responsibilities and workloads of personnel assigned to the building;

(3) Establishes a maximum number of students who may be assigned to a classroom or teacher;

(4) Prohibits the public employer from making reductions in teachers or nonteaching employees for specified reasons or adopted in an authorized policy;

(5) Restricts the authority of the public employer, when making personnel reductions, to determine the order of layoffs;

(6) Restricts the authority of the public employer to acquire noneducational services from another public or private entity through competitive bidding;

(7) Otherwise relinquishes, impairs, or restricts the managerial rights and responsibilities of the public employer.

The bill requires a collective bargaining agreement entered into between a public employer that is a school district, educational service center, community school, or STEM school and that public employer's employees to comply with all applicable state or local laws or ordinances regarding wages, hours, and terms and conditions of employment of public employees, except that the collective bargaining agreement may

[21] R.C. 4117.08(D).

include a provision that conflicts with an applicable law or ordinance if the provision establishes benefits that are less than the benefits conferred by the law or ordinance and the law or ordinance has not been expressly deemed to prevail over the conflicting provision. The bill declares void any provision of the agreement that conflicts and that does not fulfill the exception.

Under the bill, a public employer described immediately above is not required to, and may refuse to bargain on the continuation, modification, or termination of a provision of an existing collective bargaining agreement.[22]

Fiscal watch or emergency

The bill prohibits any agreement entered into under the PECBL on or after the bill's effective date from prohibiting a public employer that the Auditor of State has declared to be in a state of fiscal watch from serving a written notice to modify a collective bargaining agreement so that salary or benefit increases, or both, are suspended. Additionally, the bill prohibits any agreement entered into under the PECBL on or after the bill's effective date from prohibiting a public employer that the Governor or Auditor of State has declared to be in a state of fiscal emergency or in the case of a state university or college, that a conservator has been appointed for, from serving a written notice to terminate, modify, or negotiate a collective bargaining agreement. If the public employer sends either of these notices, the parties may collectively bargain and enter into a new collective bargaining agreement pursuant to the procedures prescribed in the PECBL.

The bill requires each agreement entered into under the PECBL on or after the bill's effective date to contain a statement that the agreement may be terminated, modified, or negotiated as described immediately above.[23]

Grievance procedures, automatic deductions, and layoffs

The bill limits the application of the grievance procedure required under continuing law to unresolved grievances that are based on the disputed interpretations of the express written provisions of the agreement. Currently, the grievance procedure addresses unresolved grievances and disputed interpretations of agreements.

The bill also limits the continuing law requirement that an agreement contain a provision to authorize the public employer to deduct the periodic dues, initiation fees, and assessments of members of the exclusive representative upon presentation of a

[22] R.C. 4117.081.

[23] R.C. 4117.104.

written deduction authorization by the employee. The bill permits this deduction to occur only if the employee organization has filed and maintained its financial report outlining the organization's expenditures as required under continuing law.

The bill prohibits a public employer from agreeing to a provision in a collective bargaining agreement that requires the public employer, when a reduction in force is necessary, to use an employee's length of service as the only factor to determine whether to lay off the employee.[24]

Privatization

As discussed under "**Mandatory subjects of collective bargaining**" above, the bill eliminates privatization of a public employer's services or contracting out of the public employer's work as an appropriate subject of collective bargaining. The bill further prohibits any agreement entered into or renewed under the PECBL on or after the bill's effective date from containing any provision that in any way prohibits a public employer from entering into a contract with another public or private sector entity to privatize the public employer's services or the contracting out of the public employer's work. Additionally, that agreement cannot contain any provisions that cause the public employer to do any of the following:

- Retain existing employees as employees of the public employer if their work is privatized or subcontracted to another entity;

- Pay any additional payments to employees who may be laid off as the result of such privatization or subcontracting, except for payments for accumulated time or leave credits that would normally be paid by the public employer to any other employee who is laid off for reasons other than the subcontracting or privatization of their work.

The bill makes any provision inconsistent with these requirements contained in an agreement entered into or renewed on or after the bill's effective date void and unenforceable.[25]

Leave accrual and pay out

The bill prohibits a collective bargaining agreement entered into or renewed on or after the bill's effective date from containing any provision that allows accrual of leave credits in excess of the following:

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[24] R.C. 4117.09(A) and (F).

[25] R.C. 4117.105.

- 6 weeks annually of paid vacation prior to 20 years of service;
- 12 paid holidays annually;
- 3 paid personal days annually.

For purposes of these determinations, "days" means eight working hours and "week" means 40 working hours for employees working a normally scheduled work week. Those employees working a work week that exceeds or is less than 40 hours must have the number of hours per day or week increased or reduced proportionately based on the difference in hours between the employee's average work week and 40 hours.[26]

The bill also provides that no collective bargaining agreement that is modified, renewed, extended, or entered into on or after the bill's effective date is permitted to provide vacation leave in an amount greater than that provided in statute, which caps vacation leave at 7.7 hours per biweekly pay period for employees with 19 or more years of service.[27]

The bill prohibits a collective bargaining agreement entered into or renewed on or after the bill's effective date from containing a provision for the exchange or sell-back of a public employee's accumulated paid sick leave balance at the public employee's final retirement or death that provides for a cash payment that exceeds 50% of the public employee's total sick leave accumulations and for accumulated sick leave in excess of 1,000 hours. The payment must be based upon the public employee's hourly rate of pay at time of final retirement, unless the employee is a member of the Ohio Police and Fire Pension Fund and participates in the Deferred Retirement Option Plan (DROP). For that type of employee, the payment must be based upon the public employee's hourly rate in effect at the time the employee entered DROP.

For purposes of this provision, "final retirement" means when an employee retires and is immediately eligible to receive pension benefits by satisfying the normal length of service and age qualifications or as a result of disability.[28]

Restrictions for DROP participants

The bill also includes limitations with respect to DROP as administered by the Ohio Police and Fire Pension Fund. The bill prohibits any agreement entered into or

[26] R.C. 4117.108.

[27] R.C. 124.134(F).

[28] R.C. 4117.109.

renewed under the PECBL on or after the bill's effective date from containing any provisions that do any of the following:

- Provide for any supplemental wage payments based on length of employment to any employee participating in DROP;

- Provide for any annual paid vacation leave earning in excess of five weeks to any employee participating in DROP;

- Provide for the ability of any employee participating in DROP to carry over vacation leave from one year to another that exceeds a total accumulation of the equivalent of three years vacation leave;

- Provide the basis for the payment to any employee participating in DROP of any accumulated paid leave, including, but not limited to, sick leave, vacation leave, and compensatory time, that is based on an employee's hourly wage rate greater than the employee's wage rate on the date the employee commenced participating in DROP.

The bill requires the Ohio Police and Fire Pension Fund to notify the public employer of the respective employee of the date upon which the employee entered DROP and to notify the public employer of the date any employee entered DROP prior to the bill's effective date.[29]

Other provisions

The bill also prohibits a collective bargaining agreement entered into or renewed on or after the bill's effective date from containing a provision that does any of the following:

- Limits a public employer in determining the number of employees it employs or has working at any time, in any facility, building, classroom, on any work shift, or on any piece of equipment or vehicle;

- Provides for the public employer to pay any portion of a public employee's state pension contributions or payments;

- Provides for an hourly overtime payment rate that exceeds the overtime rate required by the federal Fair Labor Standards Act.

[29] R.C. 4117.107.

- Requires the public employer to adhere to, follow, or continue any practices or benefits not specifically set forth in the specific written provisions of the agreement.

The bill makes any provision inconsistent with this section that is contained in an agreement entered into or renewed on or after the effective date of this section is void and unenforceable.[30]

Agreement approval

The bill extends the date by which the public employer must submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body to 30 days after the agreement is finalized, rather than 14 days under current law, unless otherwise specified. If the appropriate legislative body is not in session at the time, then under continuing law the public employers must submit the request within 14 days after the legislative body convenes.[31]

Dispute resolution procedures

The bill makes several changes to the procedures that govern the settlement of disputes between an exclusive representative and a public employer concerning collective bargaining agreements.

Duty to bargain

The bill removes any requirement that the public employer and exclusive representative collectively bargain on the continuation, modification, or termination of a provision of an existing agreement. The bill specifically allows the parties to refuse to collectively bargain on these issues under the same circumstances. Continuing law requires the parties to enter into collective bargaining under all other circumstances upon receiving a written notice from the other party of the proposed termination, modification, or successor agreement.

The bill also extends the timeline for initial negotiations. Under the bill, parties negotiating an initial agreement must offer to meet for a period of 120 days, increased from 90 days under current law, for purposes of negotiating an agreement.

The bill also specifically requires, with respect to parties that have an existing agreement, that the parties, not less than 60 days prior to the existing agreement's

[30] R.C. 4117.106.

[31] R.C. 4117.10.

expiration date, offer to bargain collectively with the other party for the purpose of modifying or terminating any existing agreement or negotiating a successor agreement and notify SERB of the offer by serving upon SERB a copy of the written notice to the other party and a copy of the existing collective bargaining agreement. While these actions are required under continuing law, current law does not include timelines for the actions to occur. The bill also requires these parties to continue in full force and effect all the terms and conditions of any existing collective bargaining agreement for a period of 90 days, increased from 60 days under current law, after the party gives notice or until the agreement's expiration date, whichever occurs later.[32]

Mediation

The bill eliminates the ability of the parties to submit disputed issues to a mutually agreed-upon dispute resolution procedure. Under current law, if at any time prior to 45 days before an existing agreement expired the parties could not reach an agreement, the parties could agree to submit the dispute to agreed-to dispute resolution procedures such as conventional arbitration or a conciliator's council.

The bill also eliminates the current law timelines to request SERB to intervene and for SERB to appoint a mediator. Thus, under the bill, if the parties are unable to reach an agreement at any time, any party may request SERB to intervene. Under continuing law the request must set forth the names and addresses of the parties, the issues involved, and, if applicable, the expiration date of any agreement. SERB then must intervene and investigate the dispute to determine whether the parties have engaged in collective bargaining. SERB also must appoint a mediator to assist the parties in the collective bargaining process.[33]

Fact-finding

Under the bill, similar to current law, any time after a mediator is appointed, a party may request the appointment of a fact-finder, instead of a fact-finding panel under current law. The bill requires the fact-finder to be appointed pursuant to the same procedures as a fact-finding panel under current law, and the fact-finder operates in a similar manner as a fact-finding panel, which is similar to advisory arbitration.

In making the fact-finder's findings of fact and recommendations, the bill requires a fact-finder to take all of the following factors into account, many of which are the same factors a fact-finding panel or conciliator must take into account under current law:

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[32] R.C. 4117.14(B).

[33] R.C. 4117.14(C) and (E) (repealed).

(1) As the primary consideration, the interests and welfare of the public and the ability of the public employer to finance and administer the issues proposed (similar to current law, except current law does not require this to be the "primary factor");

(2) Past collectively bargained agreements, if any, between the parties (same as current law);

(3) Comparison of the issues submitted to fact-finding relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved (same as current law);

(4) The lawful authority of the public employer (same as current law);

(5) The stipulations of the parties (same as current law);

(6) The compensation paid by the public employer to the public employer's public employees who are not members of the bargaining unit represented by the exclusive representative or who are members of that bargaining unit but are not members of the exclusive representative;

(7) The effect of the recommendations on the public employer's employer-wide collective bargaining program and practices, and the potential increases in cost to the public employer;

(8) Such other factors, not confined to those listed in (1) to (7) above, that are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment (same as current law).

The bill permits fact-finding hearings to be open to the public if either party requests. The fact-finder's finding of fact and recommendations on the unresolved issues must be sent to the public employer, the employee organization, and SERB no later than 30 days (increased from 14 under current law) after the fact-finder's hearing, unless the parties mutually agree to an extension. The bill requires the fact-finding panel to include with its findings of fact and recommendations a written report explaining how each of the factors described in (1) to (8) immediately above factored into the panel's findings and recommendations.[34]

[34] R.C. 4117.14(C)(1) to (3) and 4117.21, with conforming changes in R.C. 4117.02.

Final resolution

The bill extends the timeline for the parties to vote regarding the fact-finder's findings of fact and recommendations from 7 to 14 days after the findings and recommendations are sent. Under continuing law, if neither party rejects the recommendations, the recommendations constitute the final resolution of the disputed issues and a collective bargaining agreement must be executed between the parties. However, if either party rejects the findings and recommendations, SERB must publicize the findings and recommendations.

If either party rejects the findings and recommendations, then currently at this point in the process, those parties who are permitted to strike may do so in accordance with current law procedures. Those who are not permitted to strike (see "**Background – employees who are not permitted to strike**," below) must submit the dispute to final offer settlement procedure (commonly referred to as binding arbitration), during which a conciliator chooses between the issues submitted by the parties. The bill, however, generally prohibits public employees from striking (see "**Prohibition against strikes**" above) and also eliminates the final offer settlement procedure.

Under the bill, if the parties are unable to reach agreement within 14 days after the publication of findings and recommendations (increased from 7 days under current law) or the collective bargaining agreement, if one exists, has expired, then chief executive officer of the public employer involved must, within 60 days after the rejection of the fact-finder's findings and recommendations, or within 60 days after the collective bargaining agreement expires, submit to the legislative body of the public employer a copy of the findings recommendations, together with a copy of the public employer's last best offer. The exclusive representative must submit the exclusive representative's last best offer within the same time limitations.

After receiving the submissions, the legislative body or a duly authorized committee of the legislative body must conduct a hearing, as soon as is practicable, at which the parties must be required to explain their positions with respect to the fact-finder's report. The bill requires the legislative body to hold the hearing open to the public and prohibits the legislative body from deeming the hearing an executive session of the legislative body. Upon the conclusion of the hearing, the legislative body must vote to accept either the last best offer of the exclusive representative or the last best offer of the public employer. The parties must execute a collective bargaining

agreement that represents the last best offer chosen by the legislative body and that agreement must be effective for a term of three years.[35]

Publication requirements

The bill requires SERB and public employers to post in a conspicuous location on the web site maintained by SERB or the employer, respectively, the terms of the last collective bargaining agreement offered by the public employer and the terms of the last collective bargaining agreement offered by the exclusive representative at specific times. If the parties ask SERB to intervene in the negotiations, then SERB and the employer must promptly post. If either party requests the appointment of a fact-finding panel, then SERB and the employer must promptly post.

Unfair labor practices

The bill expands the current law list of actions that constitute an unfair labor practice by an employee organization, its agents, or representatives, or public employees to include both of the following:

- Communicates or attempts to engage in other direct dealings during the period of negotiations with elected or appointed officials of the public employer, other than those individuals designated to represent the public employer, regarding wages, hours, and terms and conditions of employment, or with regard to matters that are or may become the subject of collective negotiations;

- Induce or encourage any individual to engage in a secondary boycott whether under the existing agreement or as part of another employee organization's concerted activity, whether in the public or private sector.

The bill makes picketing, striking, or other concerted refusal to work an unfair labor practice. Currently, those activities are an unfair labor practice only if the employee organization or public employees failed to provide the required notice.

Under the bill, expression of any views, argument, or opinion, or the dissemination of any of those items, whether in written, printed, graphic, or visual form, cannot constitute or be evidence of a public employer's or an employee organization's engagement in an unfair labor practice under the PECBL if the expression contains no threat of reprisal or force or promise of benefit.[36]

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[35] R.C. 4117.14(C)(4) and (D).

[36] R.C. 4117.11(B) and (C).

A party may file a charge with SERB in the event of an unfair labor practice. It appears that the bill eliminates SERB's current law duty to investigate every charge filed and instead requires SERB to conduct a hearing for each charge filed. Currently, SERB is required to conduct a hearing only if, after an investigation, SERB has probable cause for believing a violation has occurred. Since SERB is no longer, under the bill, issuing complaints to have a hearing, the bill changes references to "complaints" under the PECBL to "charge" and applies continuing law procedures to those charges.[37] The bill also eliminates the timelines for SERB, a SERB member, or an administrative law judge to conduct a hearing (currently ten days after SERB issues a complaint and requires a hearing) and instead requires those entities to hold a hearing as soon as practicable.

Under continuing law, the charged party may file an answer to an original or amended complaint. Under the bill, the failure to file or timely file an answer must not be construed as any admission against the non-responding party, and the party may present its response or challenge to the charge at any time prior to the hearing.

Under continuing law, a SERB member or administrative law judge who conducts a hearing must issue a proposed decision and submit it to SERB. The bill eliminates the requirement that if the parties file no exceptions within 20 days after service of the proposed decision, the recommended order becomes the order of SERB effective as prescribed in the decision. If the parties file an exception, the bill permits SERB to consider any issues raised by a party. Under continuing law, SERB determines based upon the preponderance of the evidence whether an unfair labor practice occurred and if so, may order remedies.

In addition to continuing law remedies for an unfair labor practice, if SERB determines that any of the following unfair labor practices have occurred, SERB must order the suspension of the payment of dues or fees to the employee organization for the greater of 30 days or two times the duration of the illegal activity:

- An employee organization, its agents, or a public employee called, instituted, maintained, or conducted a boycott against any public employer, or picketed any place of business of a public employer, on account of any jurisdictional work dispute.

- An employee organization, its agents, or a public employee induced or encouraged any individual to do either of the following:

    - To engage in a strike in violation of the PECBL or refusal to handle goods or perform services;

[37] R.C. 4117.12 and 4117.13.

- To engage in a secondary boycott whether under the existing agreement or as part of another employee organization's concerted activity, whether in the public or private sector.

- An employee organization, its agents, or a public employee threatened, coerced, or restrained any person where an object thereof was to force or require any public employee to cease dealing or doing business with any other person, or force or require a public employer to recognize for representation purposes an employee organization not certified by SERB.

- An employee organization, its agents, or a public employee induced or encouraged any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer.

- An employee organization, its agents, or a public employee engaged in any picketing, striking, or other concerted refusal to work.

One of the continuing law remedies for an unfair labor practice is reinstatement. However, a public employee cannot be reinstated if the suspension or discharge was for just cause not related to public employee rights under the PECBL. The bill expands this prohibition to restrict reinstatement if the predominant basis for the suspension or discharge was not related to public employee rights under the PECBL.[38]

Under continuing law any person aggrieved by any SERB final order granting or denying, in whole or in part, the relief sought may appeal to the court of common pleas of any county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or principally (as added by the bill) transacts business. The bill requires the court to immediately serve a copy of the notice of appeal filed to all of the other parties, not just to SERB as under current law.[39]

Self-interest

The bill prohibits a public official or employee from participating on behalf of a public employer in the collective bargaining process with respect to any matter in which the official or employee, or the immediate family of the official or employee, has

[38] R.C. 4117.12.

[39] R.C. 4117.13.

a direct interest in the outcome of the matter. "Immediate family" is a spouse residing in the person's household or any dependent child.[40]

Employee compensation reports

Beginning with the first collective bargaining agreement entered into on or after the bill's effective date between a public employer and an exclusive representative, and for each collective bargaining agreement entered into after that time, the bill requires the public employer to submit a report to SERB concerning compensation paid to employees under the collective bargaining agreement. The report must list all of the following:

(1) Each provision in the collective bargaining agreement that affects the compensation paid by the public employer to its public employees;

(2) A description of the changes in compensation paid to the public employer's public employees that are not addressed in the collective bargaining agreement but will occur during the time period the collective bargaining agreement is in effect;

(3) Any material terms of the agreement.

The bill defines "compensation" as wages, salary, and other earnings paid to a public employee by reason of employment. "Compensation" includes all of the following that are provided by a public employer to a public employee: (1) allowances for food or drink, (2) allowances or stipends for clothing, (3) compensation in addition to base salary for labor performed or services rendered by the public employee, including any additional compensation paid for attending an event that occurs outside the public employee's normal work schedule, (4) payments for length of service, (5) allowances for dry cleaning services, (6) insurance coverage, including health insurance, vision insurance, dental insurance, disability insurance, or life insurance, and (7) anything of value given to a public employee by a public employer for labor performed or services rendered by the public employee.

The employer must submit the required report to SERB within 30 days after entering into the collective bargaining agreement. In that same time, the employer also must post a copy of the report in a conspicuous manner on the employer's web site. SERB also must post a copy of the report in a conspicuous manner on its web site upon receipt of the report.

[40] R.C. 4117.20(B) and 102.01(D).

If a public employer does not maintain a web site, then the public employer must provide copies of the report to two newspapers of general circulation, in the county in which the public employer is located. If the public employer is located in more than one county, then the public employer must provide copies of the report to newspapers of general circulation in Cincinnati, Cleveland, Columbus, and Toledo.

If a change in compensation is to occur during the time period a collective bargaining agreement is in effect and that change was not included in the report submitted to SERB, or if the public employer and exclusive representative enter into a modified collective bargaining agreement during that time period, the public employer must submit an updated report to SERB not less than five days before the change is to take effect. The employer also must post the updated report in a conspicuous manner on its web site not less than five days before the change is to take effect. Upon receiving the updated report, SERB must post a copy of the report in a conspicuous manner on its web site as well.[41]

Liberally construe

The bill repeals the current law requirement that the Public Employee Collective Bargaining Law be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between all public employers and their employees.[42]

Effect on existing contracts

Under the bill, the amendments to the PECBL by the bill apply to a collective bargaining agreement entered into on or after the bill's effective date and to versions of a collective bargaining agreement in effect on the bill's effective date that result from extension, modification, or renewal of the collective bargaining agreement on or after that date.[43]

Public employee pay

The bill creates pay ranges for most public employees by removing steps from the salary schedules. Progression through these schedules, under the bill, is based upon merit.[44] Additionally, with respect to certain employees who must currently be paid at

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[41] R.C. 4117.26.

[42] R.C. 4117.22 (repealed).

[43] Section 4.

[44] See R.C. 124.14, 124.15, and 124.152.

a pay rate in accordance with a particular step must be paid within the applicable range under the bill.

Some salary schedules under current law do not exist in statute but are established by different governing authorities with statutory authority. In those cases, the bill retains the duty of the governing authority to establish pay schedules for employees, but requires that pay under those schedules and progression through the same be based upon merit.[45]

Specifically, the bill requires that the following persons progress through a salary schedule based upon merit or be paid a wage or salary based upon a particular salary range:

- Any employee whose position is included in the job classification plan that the Director of Administrative Services must establish under continuing law for all positions, offices, and employments the salaries of which are paid in whole or in part by the state;[46]
- Board and commission members;[47]
- Part-time employees;[48]
- Exempt employees;[49]
- Regular full-time employees in positions assigned to classes within the instruction and education administration, except certificated employees on the instructional staff of the State School for the Blind or the State School for the Deaf, whose positions are scheduled to work on the basis of an academic year rather than a full calendar year;[50]
- Correctional Institution Inspection Committee staff, excluding the Director;[51]

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[45] R.C. 103.74, 122.64, 307.054, 339.06, 339.07, 340.04, 505.38, 505.49, 749.082, and 749.083.

[46] R.C. 124.14(A)(1).

[47] R.C. 124.15(A).

[48] R.C. 124.15(C).

[49] R.C. 124.152.

[50] R.C. 124.15(K).

[51] R.C. 103.74.

- Employees of the Department of Development, Division of Economic Development;[52]

- Members of the Minority Development Financing Advisory Board;[53]

- Seasonal and casual employees in the service of the state, except for elected officials; legislative employees; employees of the Legislative Service Commission; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General; employees of the courts; employees of the Bureau of Workers' Compensation whose compensation the Administrator establishes; or employees of an appointing authority authorized by law to fix the compensation of those employees;[54]

- Employees of each county board of developmental disabilities;[55]

- Employees of the board of trustees of a joint emergency medical services district.[56]

With respect to certain state employee positions that the Director of Administrative Services are impracticable to include in the state job classification plan, the bill requires the Director to establish the rate and method of their compensation based upon merit.[57]

Pay supplements for certain state employees

The bill removes a pay supplement provision that is currently available to certain public employees. The removed provision applies, as do most of the other pay supplement provisions, which were retained by the bill, to employees paid in accordance with Schedule B of R.C. 124.15 or Schedule E-1 or Schedule E-1 for Step 7 only of R.C. 124.152. The removed provision makes available to those employees an

[52] R.C. 122.64.

[53] R.C. 122.72.

[54] R.C. 124.14(I).

[55] R.C. 5126.24(D).

[56] R.C. 307.054.

[57] R.C. 124.14(H).

automatic, annual salary adjustment after five years of service with the state or any of its political subdivisions.[58]

The remaining pay supplement provisions that continue to be available to employees who are paid in accordance with Schedule B of R.C. 124.15 or Schedule E-1 or Schedule E-1 for Step 7 only of R.C. 124.152 include a special hazard salary adjustment, pay for returning to work after termination of the employee's regular work schedule, a pay supplement to attract bilingual employees, shift differential, long-term higher level work, a professional achievement pay supplement, and an educational pay supplement.[59]

The bill retains the authority of a state agency, board, or commission to give supplementary compensation to a licensed physician in its employ but the schedule for the supplementary compensation be based upon merit.[60]

Teacher pay

The bill eliminates the salary schedules and steps in place for teachers and nonteaching employees and instead requires teachers to receive performance based pay. The bill requires a board to measure a teacher's performance by considering all of the following:

(1) The level of license (a resident educator license, professional educator license, senior professional educator license, or lead professional educator license) that the teacher holds;

(2) Whether the teacher is a "highly qualified teacher" as defined in continuing law;

(3) The value-added measure the board uses to determine the performance of the students assigned to the teacher's classroom;

(4) The results of the teacher's performance evaluations conducted under continuing law, any peer review program created by an agreement entered into by a board of education and representatives of teachers employed by that board, or any other system of evaluation used by the board;

(5) Any other criteria established by the board.[61]

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[58] R.C. 124.181(A) and (E).

[59] R.C. 124.181.

[60] R.C. 124.181(L).

Public employee benefits

Health care benefits

All public employees

Under the bill, public employees, including employees of the state and any of its political subdivisions, must be responsible for at least 15% of the cost of the provision of health care benefits provided by through Department of Administrative Services. "Health care benefits" include hospitalization, surgical, major medical, dental, vision, and medical care, disability, hearing aids, prescription drugs, or a combination of these benefits. Additionally, the health care benefits provided to a management level employee as defined in the PECBL must be the same as any health care benefits provided to other employees of the same public employer.[62]

Jointly administered trust funds

Under continuing law, any public employer that is the state or a political subdivision and any collective bargaining representative of the state's or political subdivision's employees may agree in a collective bargaining agreement that health care benefits be provided through a contribution to a jointly administered trust fund. The Department of Administrative Services may enter into an agreement with a jointly administered trust fund to provide self-insurance of health care benefits. The bill requires any health care benefits provided through this fund to be the same as the health care benefits provided through the Department of Administrative Services if self-insuring, or the same as the health care benefits provided under a contract entered into between the political subdivision and the insurance company providing those benefits. The Director of Administrative Services or the political subdivision is required by the bill to make any contract for health care benefits available to the board of trustees of the jointly administered trust fund.[63]

School district employees

Under current law, health care benefits for employees of the board of education of any school district are governed by the School Employees Health Care Board and the Public Schools Health Care Advisory Committee.

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[61] R.C. 3317.13, with conforming changes in R.C. 3306.01, 3313.42, 3317.01, 3317.11, 3319.088, 3319.11, 3319.14, 3319.18, and 5126.24.

[62] R.C. 124.81(H) to (J) and 124.82(G) and (H).

[63] R.C. 124.81(F) and (G), 124.82(E), 505.60, and 1545.071.

The bill permits the boards of education of Ohio's school districts to govern health care benefits for employees in the same way that the governing board of any public institution of higher education can under Ohio law, except that the health care plans provided must contain the Board's best practices. The boards of education can procure health care plans for their employees and their employees' dependents and pay up to 85% of the costs for those plans. They must keep certain people on the payroll for purposes of providing health insurance, paying all or part of the cost of that coverage except in certain circumstances. Also, it seems the plans would have to comply with Ohio law governing public employee benefit plans, including the coverage mandates that apply to those plans.[64]

The bill permits a board member to be covered under a health care plan procured by the board, at the member's option. The health care plan provider (i.e., the insurer) must certify the cost of coverage for the board member, and the board member must pay that amount to the school district. This requirement on the board member to pay the cost of the plan seems parallel to the board member's duty under current law to pay "all premiums." Under the bill, the board of education, instead of the Health Care Board under current law, can determine the manner of payment.[65]

Employee contributions to public employee retirement systems

With regard to the five state public retirement systems, the bill prohibits a public employer from paying the statutorily required employee contribution on behalf of an employee. Public employees who contribute to the Public Employees Retirement System, the School Employees Retirement System, or the State Teachers Retirement System must pay 8% of their earnable salary or compensation to those systems under continuing law, and may be required to pay up to 10% of their compensation at the option of the appropriate governing board. Contributors to the Ohio Police and Fire Pension Fund and the State Highway Patrol Retirement System must pay 10% of their income to the appropriate retirement system. Currently, employee contributions to the State Teachers Retirement System are the only contributions of those listed above that an employer has express authority to pay on behalf of an employee.

Employee contributions to the retirement systems listed above can be treated as employer contributions for the purposes of state and federal income tax deferred compensation provisions, under the bill.[66]

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[64] R.C. 9.90, 3311.19, 3313.12, 3313.202(B), and 3313.33.

[65] R.C. 3313.202(C).

[66] R.C. 145.47, 742.31, 3307.27, 3309.47, and 5505.15.

Board of education employee leaves

The bill abolishes the sick leave, leave of absence, and assault leave provided to all school employees, the personal leave and vacation leave provided to nonteaching employees, and the professional improvement leave provided to teachers.[67] The bill instead requires the board of education of each city, exempted village, local, and joint vocational school district and the governing board of each educational service center to adopt a policy to provide leave with pay for the employees of the board who are not covered by a collective bargaining agreement. The board must include all of the following in the policy:

(1) The types of leave the employee may use;

(2) The reasons for which an employee may use the types of leave the board grants under the policy;

(3) The amount of each type of leave an employee may receive;

(4) The manner in which an employee accumulates each type of leave;

(5) The maximum amount of each type of leave that an employee may accumulate;

(6) The manner in which any previously accumulated leave of a person who has been separated from public service will be placed to the employee's credit upon re-employment in the public service;

(7) The manner in which a teacher or nonteaching school employee who transfers from one public agency to another will be credited with the unused balance of the teacher's or nonteaching employee's accumulated leave up to the maximum of the leave accumulation permitted in the public agency to which the employee transfers;

(8) Whether, and the manner in which, teachers and nonteaching school employees who render part-time, seasonal, intermittent, per diem, or hourly service will be entitled to leave for the time actually worked;

(9) The manner in which the board provides leave;

(10) Any other issue relating to the use and availability of leave.

An employee must obtain approval of the responsible administrative officer to use leave in accordance with the leave policy the board adopts.

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[67] R.C. 124.38, 3319.084, 3319.13, 3319.131, 3319.141, 3319.142, and 3319.143.

The bill permits a board, in its policy, to require an employee to furnish a written, signed statement on forms prescribed by such board to justify the use of any sick leave granted under the policy. If the board requires the employee to submit a statement from a physician, falsification of a statement is grounds for suspension or termination of employment.

The board may not grant or credit sick leave in excess of ten days per calendar year to a teacher after the teacher's retirement or termination of employment in the policy.

The bill permits each board of education to establish regulations for the entitlement, crediting, and use of leave by those substitute teachers employed by such board who are not otherwise entitled to sick leave.

The leave policy adopted by the board does not interfere with any unused sick leave credit in any agency of government where attendance records are maintained and credit has been given for unused sick leave. Unused sick leave accumulated by teachers and nonteaching school employees prior to the effective date of the bill, will continue to be credited toward the maximum accumulation permitted under a policy adopted under the bill.

The board is required to post the policy in a conspicuous location on the web site maintained by the board. The board is required to review the policy on an annual basis and to post any changes to that policy in a conspicuous location on that web site.

The bill permits the board and an exclusive representative to agree to apply the policy to employees covered by a collective bargaining agreement between the two parties.[68]

The bill requires all of the following types of leave to be awarded in accordance with the policy adopted by the board:

(1) Administrative leave with pay;[69]

(2) Sick leave or leave of absence for the board treasurer;[70]

(3) Vacation leave for the board treasurer;[71]

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[68] R.C. 3319.141 and conforming changes in R.C. 124.38 and 124.39.

[69] R.C. 124.388.

[70] R.C. 3313.23.

(4) Vacation leave for the superintendent;[72]

(5) Sick leave or leave of absence for the superintendent;[73]

(6) Vacation leave for assistant superintendents, principals, assistant principals, and other administrators;[74]

(7) Vacation leave for internal auditors;[75]

(8) Sick leave for substitute teachers assigned to one specific teaching position who have served at least 60 days in that position;[76]

(9) Leave of absence for a teaching or regular nonteaching school employee;[77]

(10) Professional leave for members of the educator standards board, the subcommittee on standards for superintendents, and the subcommittee on standards for school treasurers and business managers;[78]

(11) Vacation leave for nonteaching employees.[79]

Continuing contracts for teachers

The bill abolishes continuing contracts for teachers, except for those continuing contracts entered into prior to the effective date of the bill. The bill instead requires classroom teachers to receive limited contracts. A limited contract for a classroom teacher has a term of five years if the contract was entered into prior to the effective date of the bill. The term of an initial contract cannot exceed three years if the contract

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[71] R.C. 3313.24.

[72] R.C. 3319.01.

[73] R.C. 3319.011.

[74] R.C. 3319.02.

[75] R.C. 3319.06.

[76] R.C. 3319.10.

[77] R.C. 3319.13.

[78] R.C. 3319.63.

[79] R.C. 3319.084.

is entered into on or after the effective date of the bill and for subsequent contracts the term is not less than two years or more than five years.[80]

Vacation and sick leave

The bill caps vacation leave for exempt employees, other employees required to be paid according to the exempt salary schedule, legislative employees, certain executive branch employees, and any position for which the authority to determine compensation is given by law to another individual or entity who is not the Director of Administrative Services who have 19 or more years of service at 7.7 hours per biweekly pay period (approximately 5 weeks of vacation per year). This is the current cap for such employees with 19 to 24 years of service; such employees with 24 or more years of service currently earn 9.2 hours of vacation leave per biweekly pay period (approximately 6 weeks of vacation per year).[81]

The bill also reduces the amount of sick leave most local public employees receive from 4.6 hours per biweekly pay period (approximately 3 weeks total per year) to 3.1 hours per biweekly pay period (approximately 2 weeks total per year). This reduction applies to both of the following groups:

- Employees in the various offices of the county, municipal, and civil service township service, other than superintendents and management employees, as defined under continuing law, of county boards of developmental disabilities;

- Employees of any state college or university.

Currently, employees paid by warrant of the Director of Budget and Management (essentially, state employees) receive 3.1 hours of sick leave per biweekly pay period (approximately 2 weeks total per year).[82]

Reductions in the public sector work force

State and county employees

In general, the bill limits the use of seniority and length of service in making decisions regarding layoffs. Continuing law requires that the Director of Administrative Services adopt rules establishing a method for determining layoff

[80] R.C. 3319.08, 3319.11, 3319.17, and 3319.172.

[81] R.C. 124.134.

[82] R.C. 124.38 and 124.384, not in the bill.

procedures and an order of layoff of state and county employees. Under the bill, the order of layoff under those rules can still be based in part on length of service but cannot be based solely on the employee's length of service. Additionally, the bill requires, instead of allows, efficiency in service, appointment type, and other appropriate factors to be considered.[83]

The bill also prohibits a county transit board that establishes its own civil service organization before October 25, 1995, from using an employee's length of service as the only factor in deciding layoffs.[84]

School district employees

School districts are similarly limited in their considerations concerning a reduction in work force. With regard to teaching and nonteaching employees, the bill removes the authority of school districts and school district financial planning and supervision commissions to give preference to those employees who have greater seniority. Teachers and nonteachers with continuing contracts receive preference under continuing law. The bill states that after giving preference to continuing contracts, the board of a city, exempted village, local, or joint vocational school district is required to consider the relative quality of performance the principal factor in determining the order of reductions. With respect to teachers, the board is required to measure the quality of performance by considering the level of license that the teacher holds, whether the teacher is considered a "highly qualified teacher," the value-added measure the board uses to determine the performance of the students assigned to the teacher's classroom, the results of the teacher's performance evaluation, and any other criteria established by the board. Teachers and nonteaching employees whose continuing contracts are suspended by a city, exempted village, local, or joint vocational school district, however, have the right under continuing law to be brought back in the order of seniority.[85]

Township firefighters

The bill removes a provision under which the reduction of a township's firefighting force or a joint township fire district firefighting force, due to township territory being annexed by a municipal corporation, must be made under current law by dismissal of firefighters in the inverse order of seniority. The annexing municipal corporation must continue to offer employment to those dismissed firefighters as

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[83] R.C. 124.322, 124.325, and 4117.09(F).

[84] R.C. 306.04.

[85] R.C. 3316.07(A)(11), 3319.17(C), 3319.172, and 3319.18.

employment becomes available, but not in the inverse order of dismissal as is required under current law.[86]

Retention points

The bill requires an appointing authority to calculate retention points based on length of service, efficiency of service, and similar factors. It is unclear who calculates these retention points under current law, but the Department of Administrative Services is required under current law to verify the retention points based on length of continuous service and efficiency in service.[87] The bill also authorizes the appointing authority to adopt rules to determine the order of layoffs between two employees who have identical retention points. Under continuing law, however, the Director of Administrative Services is responsible for establishing a system for assigning retention points for state employees and determining the order of layoffs when two state employees have identical retention points. The bill requires the system adopted by the Director to permit an appointing authority to consider the number of management and nonmanagement employees when determining which employees to lay off.[88]

Discrimination

The bill prohibits a public employer, when determining whether to lay off an employee as part of a reduction in force, from considering the race, color, religion, sex, military status, national origin, disability, age, or ancestry of the employee in violation of Ohio's Civil Rights Law or any applicable federal law.[89]

Other

The bill makes additional technical, conforming, and nonsubstantive changes.[90]

Background – employees who are not permitted to strike

The following public employees currently do not have the right to strike:

(1) Members of a police or fire department;

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[86] R.C. 709.012.

[87] R.C. 124.325(A).

[88] R.C. 124.325(C).

[89] R.C. 4113.80.

[90] R.C. 124.34, 927.69, 3307.77, 3317.08, 3319.085, 3326.18, 3332.03, 4725.46, 4906.02, 5107.26, 5123.51, 5139.02, and 5503.03.

(2) Members of the State Highway Patrol;

(3) Deputy sheriffs;

(4) Dispatchers employed by a police, fire, or sheriff's department or the state highway patrol or civilian dispatchers employed by a public employer other than a police, fire, or sheriff's department to dispatch police, fire, sheriff's department, or emergency medical or rescue personnel and units;

(5) An exclusive nurse's unit;

(6) Employees of the State School for the Deaf or the State School for the Blind;

(7) Employees of any public employee retirement system;

(8) Corrections officers;

(9) Guards at penal or mental institutions;

(10) Special police officers for the Department of Mental Health or the Department of Developmental Disabilities;

(11) Psychiatric attendants employed at mental health forensic facilities;

(12) Youth leaders employed at juvenile correctional facilities;

(13) Members of a law enforcement security force that is established and maintained exclusively by a board of county commissioners and whose members are employed by that board.[91]

HISTORY

ACTION	DATE
Introduced	02-01-11
Reported, S. Insurance, Commerce, and Labor	03-02-11
Passed Senate (17-16)	03-02-11

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[91] R.C. 4117.14(D) and 4117.15(A) (repealed).